

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ST. LOUIS HEART CENTER, INC., individually)	
and on behalf of all others similarly-situated,)	
)	
Plaintiff,)	Case No.
)	
v.)	Circuit Court of the 21 st Judicial
)	District, St. Louis County, Missouri
FOREST PHARMACEUTICALS, INC.)	12SL-CC03792
)	
and)	JURY TRIAL DEMANDED
)	
THE PEER GROUP, INC.)	
)	
Defendants.)	

NOTICE OF REMOVAL

Defendant Forest Pharmaceuticals, Inc. (“Forest Pharmaceuticals”), by and through its undersigned attorneys, Husch Blackwell LLP, with the consent of Defendant The Peer Group, Inc., as indicated by the Consent to Removal attached hereto as Exhibit A, respectfully removes the above-captioned case from the St. Louis County Circuit Court, Missouri, Case No. 12SL-0003792, to the United States District Court for the Eastern District of Missouri, Eastern Division, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446. Defendant Forest Pharmaceuticals removes this case to this Court because it involves claims by Plaintiff under the Telephone Consumer Protection Act, 47 U.S.C. § 227, and further sets forth the grounds for removal below.

BACKGROUND

1. On October 4, 2012, Plaintiff St. Louis Heart Center, Inc. (“Plaintiff”) filed a Class Action Petition (“Petition”) in the St. Louis County Circuit Court, Missouri, Case No. 12SL0003792 (the “State Court Action”). Defendant Forest Pharmaceuticals was served with a summons and the state court petition on November 1, 2012. This action is therefore timely

removed pursuant to 28 U.S.C. § 1446(b) because it is filed within thirty (30) days from the date that Defendant Forest Pharmaceuticals was served with a copy of the Petition. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 356 (1999) (holding that the thirty (30) day removal period does not begin to run until defendant is formally served); *Marano Enters. of Kansas v. Z-Teca Rests., L.P.*, 254 F.3d 753, 756-57 (8th Cir. 2001) (same).

2. Defendant Forest Pharmaceuticals has not entered its appearance, filed a responsive pleading, or otherwise responded to Plaintiff's Petition in the State Court Action.

3. Pursuant to Fed. R. Civ. P. 81(c)(2), a responsive pleading or other response is not due in this Court until December 7, 2012.¹

4. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 2.03, a complete copy of the court file from the St. Louis County Circuit Court, Missouri, including a copy of all process, pleadings, and orders served in the State Court Action, which include the Summons and State Court Petition, are attached hereto as Exhibit B.

5. Plaintiff's Petition alleges that Defendants violated the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, by allegedly faxing an "advertisement" to Plaintiff, as well as the putative class members, without the recipients' permission. (Petition, ¶¶ 1-5)

FEDERAL QUESTION JURISDICTION

6. The action Plaintiff has filed in state court is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because the action asserts claims under the TCPA, which "aris[es] under" the "laws . . . of the United States." *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 742 (2012); *see also Heller v. HRB Tax Group*, Cause No.

¹ Defendant Forest Pharmaceuticals will be filing a motion with this Court requesting an extension of time to file an answer, motion or other response to Plaintiff's Petition.

4:11CV1121, 2012 WL 163842 (E.D.Mo. Jan. 19, 2012) (denying plaintiff's motion for remand of TCPA action based on the Supreme Court's decision in *Mims*).

7. Venue is proper because the St. Louis County Circuit Court, Missouri is within the United States District Court for the Eastern District of Missouri, Eastern Division. *See* 28 U.S.C. §§ 105, 1441(a) and 1446(a).

WRITTEN NOTICE OF REMOVAL HAS BEEN SUPPLIED TO PLAINTIFF

8. Pursuant to 28 U.S.C. § 1446(d), Defendant Forest Pharmaceuticals has given written notice of the filing of this Notice of Removal to Plaintiff and is filing a copy of this Notice of Removal with the Clerk of the Circuit Court of St. Louis County, Missouri.

9. By filing and/or consenting to this Notice of Removal, Defendants do not waive any available defenses and do not admit any of Plaintiff's material allegations, including class action allegations.

ADDITIONAL PROCEDURAL REQUIREMENTS

10. Pursuant to Local Rules 2.02 and 2.03, the Original Filing Form is filed herewith.

11. Pursuant to Local Rules 2.02 and 2.03, the Civil Cover Sheet is filed herewith.

12. Pursuant to Local Rule 2.04, "Jury Trial Demanded" is written on the face of the Notice of Removal as Defendant Forest Pharmaceuticals requests a jury trial.

WHEREFORE, Defendant Forest Pharmaceuticals, Inc. removes this action from the Circuit Court of St. Louis County, Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division and requests that the Court exercise its subject matter jurisdiction over this matter, and grant such other and further relief as it deems just and proper.

Respectfully submitted,

HUSCH BLACKWELL LLP

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CERTIFICATE OF SERVICE

I, Glennon P. Fogarty, hereby certify that on November 30, 2012, I caused a copy of the foregoing to be served the parties listed below by U.S. Mail:

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/s/ Glennon P. Fogarty